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PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	PAUL HAYWARD KELLY ET AL.
Serial No.:	10/678,155
Filed:	October 6, 2003
For:	INTEGRATED COLUMN WALL FOR A VENDING MACHINE
Group No.:	3651
Examiner:	Rakesh Kumar

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

This Appeal Brief Under 37 C.F.R. § 41.37 ("Appeal Brief") is filed in furtherance of the Notice of Appeal mailed on April 25, 2008. The Notice of Appeal was received by the Board of Patent Appeals and Interferences on April 28, 2008. Therefore, the due date for filing this Appeal Brief is June 28, 2008. Because June 28, 2008 is a Saturday, the due date for filing this Appeal Brief is extended to Monday, June 30, 2008.

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Real Party in Interest 37 C.F.R. § 41.37 (c)(1)(i)

This patent application is currently owned by Dixie-Narco, Inc., a corporation having a place of business in Williston, South Carolina. Dixie-Narco, Inc. acquired the patent application through purchase. The inventors Paul Hayward Kelly et al. originally assigned the patent application to Maytag Corporation, a corporation having a place of business in Newton, Iowa. The Assignment from the inventors to Maytag Corporation was recorded in the Patent and Trademark Office on January 5, 2004 on Reel 014865, and Frame 0907.

Related Appeals or Interferences 37 C.F.R. § 41.37 (c)(1)(ii)

None. There are no appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in this pending appeal.

Status of Claims **37 C.F.R. § 41.37 (c)(1)(iii)**

Claims 1-33 have been rejected in a final Office Action dated December 27, 2007.

Claims 1-33 are presented for appeal.

A copy of the claims involved in the appeal is provided in Appendix A.

Status of Amendments after Final 37 C.F.R. § 41.37 (c)(1)(iv)

No amendments to the claims have been submitted and refused entry after issuance of the final Office Action dated December 27, 2007.

Summary of Claimed Subject Matter 37 C.F.R. § 41.37 (c)(1)(v)

The following general discussion provides background for understanding the invention. A concise explanation of the subject matter of the invention defined in each of the independent claims involved in the appeal is set forth below after the general discussion.

General Discussion

The present invention pertains to the art of vending machines and, more particularly, to an internal column wall construction including integral stiffeners and isolation slot structures for a vending machine. (Specification, Page 1, Lines 8-11). In a vending machine, internal column walls are employed to define storage magazines or zones. A series of column walls are arranged at spaced positions within a vending machine cabinet and serve as partitions to contain, separate, and support a stack of products to be dispensed. The column walls are interconnected by a plurality of cross braces. (Specification, Page 2, Lines 1-9).

Regardless of the existence of the cross bracing, the center sections of the column walls still need to be stiffened in order to prevent bowing which can hamper proper product dispensing. (Specification, Page 2, Lines 10-13). To prevent such bowing, prior art stiffening components are mechanically fastened to the column walls by welding or screws or other similar types of fasteners. (Specification, Page 2, Lines 21-25).

The present invention is directed to an enhanced column wall structure for a vending machine wherein in the column walls include integral stiffeners. Vertically spaced and fore-to-aft extending stiffeners are embossed into the column wall, thereby eliminating the need for any additional discrete stiffener parts and fasteners. (Specification, Page 3, Lines 16-21).

Figure 3 illustrates a front elevational view of a vending machine including integrated column walls in accordance with the present invention. Figure 4 illustrates an exploded view of the internal vending machine cabinet structure including column walls constructed in accordance with the present invention.

As shown in Figure 3, the vending machine 14 of the present invention includes a cabinet frame 16 having top, bottom, side and rear walls 18-22 that collective define a central cavity 26. (Specification, Page 6, Lines 5-7). A door 30 is pivotally mounted to cabinet frame 16 to selectively enable access to central cavity 26. A locking mechanism 31 is provided to retain the door 30 in a closed position. An opening 32 allows a consumer to remove a vended product 61 from the vending machine 14. (Specification, Page 6, Lines 11-19).

Central cavity 26 includes a storage section 33, a dispensing section 34, a delivery section 36 and a lower section 38. Section 33 is provided with a plurality of vertically extending column walls 44-48. (Specification, Page 6, Lines 20-24). The present invention is particularly directed to the structure and configuration of column walls 44-48. (Specification, Page 7, Lines 23-25). As each column wall 44-48 is substantially identical, reference will be made to column wall 44. It is understood that column walls 45-48 have the same structure. (Specification, Page 8, Lines 8-12).

Column wall 44 is formed from a single sheet of material having a top edge 116, a bottom edge 117 and opposing side edges 118 and 119 that collectively define a substantially planar surface 120 that is divided into a plurality of regions. (Specification, Page 8, Lines 12-15). Planar surface 120 includes a top portion 130, an intermediate portion 131 and a bottom portion 132. The top portion 130 and intermediate portion 131 define a storage region 138 and the bottom portion 132 defines a dispensing region 140. (Specification, Page 8, Lines 15-19).

A plurality of stiffening elements 146-150 are provided on planar surface 120. The plurality of stiffening elements 146-150 are integrally formed into planar surface 120 and extend fore-to-aft between opposing edges 118 and 119. (Specification, Page 8, Lines 20-25). As illustrated in Figure 6, the stiffening elements 146-150 are embossed or stamped into the planar surface 120. (Specification, Page 8, Line 26 to Page 9, Line 1). The stiffening elements 146-150 may comprise substantially horizontally extending narrow slots or embossed lands. (Specification, Page 9, Lines 1-4). Stiffening elements 146-150 are provided about storage region 138 in order to reduce the bowing of column wall 44 when the stack area 53 is filled with product containers 61. (Specification, Page 9, Lines 4-7). An alignment member 160 having a guide surface 165 is integrally formed in the planar surface 120 to properly align (i.e., orient) the product containers 61. (Specification, Page 10, Lines 12 to Page 11, Line 2).

Support for Independent Claims **37 C.F.R. § 41.37 (c)(1)(v)**

Note that, per 37 C.F.R. § 41.37, only the independent claims are discussed in this section. The discussion of the claims in this section is for illustrative purposes and is not intended to affect the scope of the claims.

Claim 1 is directed to a vending machine 14 that comprises a cabinet frame 16 that includes a top, bottom, side and rear walls 18-22 that collectively define a central cavity 26. (Specification, Page 6, Lines 5-7). The vending machine 14 comprises a door 30 that is pivotally mounted to the cabinet frame 16 wherein the door 30 is selectively movable between an open condition, wherein access to the central cavity 26 is permitted for loading of product containers 61 into the vending machine 14, and closed condition, wherein dispensing of product containers 61 is permitted. (Specification, Page 6, Lines 11-19).

The vending machine 14 comprises a plurality of column walls 44-48 arranged within the cabinet frame 16 and separating the central cavity 26 into a plurality of product stack areas. Each of the plurality of column walls 44-48 is formed from a material sheet having top 116, bottom 117 and side edges 118 and 119, that define a substantially planar wall surface 120. (Specification, Page 8, Lines 12-15). The substantially planar wall surface 120 includes a plurality of integrally formed stiffening elements 146-150 that extend between the side edges 118 and 119, (Specification, Page 8, Lines 20-25), and an integrally formed alignment member 160, wherein the stiffening members 146-150 minimize bowing of the plurality of column walls 44-48 under a weight of product containers 61, (Specification, Page 9, Lines 4-7), and wherein the integrally formed alignment member 160 provides for proper positioning of product containers 61 within the product stack areas for dispensing from the vending machine 14. (Specification, Page 10, Lines 12 to Page 11, Line 2). Furthermore, at least one of the plurality of stiffening elements 150 comprises a decoupling member 150 that isolates a first area of the column wall 44 from a second area of the column wall 44 in order to minimize forces in the first area from being transferred to the second area. (Specification, Page 9, Lines 17 to Page 10, Line 11),

Claim 18 is directed to a vending machine 14 that comprises a cabinet frame 16 that includes a top, bottom, side and rear walls 18-22 that collectively define a central cavity 26. (Specification, Page 6, Lines 5-7). The vending machine 14 comprises a door 30 that is pivotally mounted to the cabinet frame 16 wherein the door 30 is selectively movable between an open condition, wherein access to the central cavity 26 is permitted for loading of product containers 61 into the vending machine 14, and closed condition, wherein dispensing of product containers 61 is permitted. (Specification, Page 6, Lines 11-19).

The vending machine 14 comprises a plurality of column walls 44-48 arranged within the cabinet frame 16 and separating the central cavity 26 into a plurality of product stack areas. Each of the plurality of column walls 44-48 is formed from a material sheet having top 116, bottom 117 and side edges 118 and 119, that define a substantially planar wall surface 120. (Specification, Page 8, Lines 12-15). The substantially planar wall surface 120 is defined by a storage region 138 and a dispensing region 140. (Specification, Page 8, Lines 15-19).

The vending machine 14 also comprises a stiffening element 150 that extends fore-to-aft across the planar surface 120 in the dispensing region 140. The stiffening element 150 comprises a decoupling member 150 that separates the bottom edge 117 from the dispensing region 140 such that the dispensing region 140 is only connected to the storage region 138 through web members 154 defined about the decoupling member 150, wherein a transfer of bow force from the storage region 138 to the bottom edge 17 is substantially eliminated. (Specification, Page 9, Line 17 to Page 10, Line 11).

Claim 28 is directed to a method of forming a column wall 44 used to form a stack area from product containers 61 to be dispensed from a vending machine 14. The method comprises the steps of: (1) providing a substantially rectangular sheet having top 116, bottom 117, and opposing side edges 118 and 119 that define a substantially planar wall surface 120 (Specification, Page 8, Lines 12-15), and (2) forming a plurality of vertically spaced stiffening elements 146-150 out of the wall surface 120 wherein at least one of the plurality of stiffening elements 150 comprises a decoupling member 150 isolating a first area of the column wall 44 from a second area of the column wall 44 to minimize forces in the first area from being transferred to the second area (Specification, Page 9, Line 17 to Page 10, Line 11), and (3) creating an integrally formed alignment member 160 along the wall surface 120 for positioning product containers 61 for proper dispensing purposes.

Grounds of Rejection to be Reviewed on Appeal 37 C.F.R. § 41.37 (c)(1)(vi)

1. Claims 1-9, 14-17 and 28 are rejected under § 103(a) as being unpatentable over United States Patent No. 6,302,293 to Wittern, Jr. et al. ("*Wittern*") in view of United States Patent No. 2,359,398 to O. T. Thompson et al. ("*Thompson*") and further in view of United States Patent No. 5,651,476 to Percy et al. ("*Percy*"). (December 27, 2007 Office Action, Page 2, Lines 10-13).

2. Claims 10 and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wittern* in view of *Thompson* and further in view of *Percy*. (December 27, 2007 Office Action, Page 8, Lines 1-3).

3. Claims 11-13, 18-23, 24-27 and 29-32 are rejected under § 103(a) as being unpatentable over *Wittern* in view of *Thompson* and in view of *Percy* and further in view of United States Patent No. 4,498,584 to Arthur D. Newbury ("*Newbury*"). (December 27, 2007 Office Action, Page 8, Lines 11-13).

Argument 37 C.F.R. § 41.37 (c)(1)(vii)

Stated Grounds of Rejection for Claims 1-9, 14-17 and 28

Ground of Rejection 1: Claims 1-9, 14-17 and 28 are rejected under § 103(a) as being unpatentable over United States Patent No. 6,302,293 to Wittern, Jr. et al. ("*Wittern*") in view of United States Patent No. 2,359,398 to O. T. Thompson et al. ("*Thompson*") and further in view of United States Patent No. 5,651,476 to Percy et al. ("*Percy*").

Stated Grounds of Rejection for Claims 10 and 33

Ground of Rejection 2: Claims 10 and 33 are rejected under § 103(a) as being unpatentable over *Wittern* in view of *Thompson* and in view of *Percy*.

Stated Grounds of Rejection for Claims 11-13, 18-23 24-27 and 29-32

Ground of Rejection 3: Claims 11-13, 18-23, 24-27 and 29-32 are rejected under § 103(a) as being unpatentable over *Wittern* in view of *Thompson* and in view of *Percy* and further in view of United States Patent No. 4,498,584 to Arthur D. Newbury ("*Newbury*").

Legal Standard for Obviousness

During *ex parte* examination of patent applications, the Patent and Trademark Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. Rev. 4, October 2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* That is, the initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent and Trademark Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of non-obviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). If the Patent and Trademark Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 USPQ 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not be based on an applicant's disclosure. MPEP § 2142.

Analysis of Examiner's Rejections

The cited references are briefly discussed in relevant part for the appropriate rejections, and each rejection is addressed separately below.

Ground of Rejection 1: Claims 1-9, 14-17 and 28 are rejected under § 103(a) as being unpatentable over United States Patent No. 6,302,293 to Wittern, Jr. et al. ("*Wittern*") in view of United States Patent No. 2,359,398 to O. T. Thompson et al. ("*Thompson*") and further in view of United States Patent No. 5,651,476 to Percy et al. ("*Percy*").

The Applicants respectfully submit that independent Claim 1 recites the novel and non-obvious limitations that are emphasized below:

> 1. (Previously Presented) A vending machine comprising:
>
> a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity;
>
> a door pivotally mounted to the cabinet frame, said door being selectively movable between an open condition, wherein access to the central cavity is permitted for loading of product containers into the vending machine, and closed condition, wherein dispensing of product containers is permitted; and
>
> a plurality of column walls arranged within the cabinet frame and separating the central cavity into a plurality of product stack areas, each of said plurality of column walls being formed from a material sheet having top, bottom and side edges that define a substantially planar wall surface, said wall surface including a plurality of integrally formed stiffening elements extending between the side edges, and an integrally formed alignment member, wherein
>
> the stiffening members minimize bowing of the plurality of column walls under a weight of product containers,
>
> the integrally formed alignment member provides for proper positioning of product containers within the product stack areas for dispensing from the vending machine, and
>
> at least one of the plurality of stiffening elements comprises a decoupling member isolating a first area of the column wall from a second area of the column wall to minimize forces in the first area from being transferred to the second area. (Emphasis added).

Claim 1 recites a column wall including (1) a plurality of integrally formed stiffening elements, at least one of which comprises a decoupling member that isolates the wall into two areas and minimizes forces in one area from being transferred to the other area, and (2) an integrally formed alignment member that provides for proper positioning of product containers. The Applicants respectfully assert that the *Wittern*, *Thompson*, *Percy* and *Newbury* references, either alone or in combination fail to teach, suggest or even hint at the above emphasized limitations.

The Examiner stated that "Wittern does not disclose the wall surface including a plurality of integrally formed stiffening elements extending between the side edges and an alignment member for positioning product." (December 27, 2007 Office Action, Page 3, Lines 4-6). The Applicants agree that the *Wittern* reference does not show these elements.

The Examiner also stated that "Wittern discloses slot members 38 disposed on the column wall 20A functioning to circumvent the loading stress experienced by the wall panel above the slot 38 around to the edges of the slot by a lack of material as a result of the removal of the material to create the slot in the column wall. The lack of material within the slot results in the loading above the slot to be transferred around the edges of the slots thus functioning to decoupled the stresses in the panel to the periphery of the edge of the slot thus, inherently acting a decoupling member for isolation stresses in the column wall." (December 27, 2007 Office Action, Page 3, Lines 7-14). The Applicants respectfully traverse these assertions of the Examiner for the reasons set forth below.

The Examiner asserts that the *Wittern* reference discloses slot members that are disposed in a column wall "inherently acting as a decoupling member for isolating stresses in the column wall." The Applicants respectfully request that the Examiner cite a reference establishing such inherency in the *Wittern* reference. Furthermore, the Applicants are unable to find in the *Wittern* reference any teaching that the slot members relied upon by the Examiner act as stiffening elements in a column wall, as recited in the claims of the patent application.

With respect to the assertion in the December 27, 2007 Office Action that the *Wittern* reference inherently teaches that the slot members 28 act as a decoupling member for isolating stresses in a column wall, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 38 USPQ2d 1955, 1957 (Fed.Cir.1993). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed.Cir.1999) (citations omitted, emphasis added).

"In relying upon the theory of inherency, the examiner must prove a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flow from the teachings of the applied prior art." *Ex party Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (Emphasis in original).

The Examiner has not provided any basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the prior art, as is required, and so the allegation of inherency cannot support the rejections.

Unlike the slots described in the Applicants' patent application, the "slots" described in the *Wittern* reference comprise "upper and lower toothed tracks 32, 34, 36 and 38." (*Wittern*, Figure 3, Column 4, Lines 38-40). "These tracks consist of elongated openings in the sidewalls, the bottom of which are defined by teeth." (*Wittern*, Column 4, Lines 40-42). "A latch mechanism 40 for front retainer 28 includes a receiver member 42 that is adjustably positionable along tracks 34 and 38 at upper and lower ends respectively." (*Wittern*, Column 4, Lines 46-49). The "slots" 34 and 38 of the *Wittern* apparatus receive (and engage on the toothed tracks) receiver member 42 of latch mechanism 40 (shown in Figure 2). "Similarly, FIG. 3 illustrates connection 64A and B on receiver member 42. They hook over one of teeth 62 on tracks 34 and 38 respectively and hold receiver 42 in position." (*Wittern*, Column 5, Lines 53-56).

In addition, a pivot member 58 is also connected between track 34 and track 38. "Pivot member can be positioned anywhere between the very front of tracks 34 and 38 (as shown in solid lines in FIG. 11) or moved rearwardly (see for example ghost lines of part 58 in FIG. 11)." (*Wittern*, Column 6, Lines 9-12). The receiver member 42 and the pivot member 58 that are connected between the track 34 and the track 38 carry any loading stress that may be experienced by the wall panel near the slot 34 and the slot 38. That is, the lack of material within slot 34 (or within slot 38) does not result in the loading above the slot to be transferred around the edges of the slot. Any loading stress would be carried by the attached receiver member 42 or the attached pivot member 58.

The same thing is true for the slot 32 and the slot 36. These two slots are connected by the back wall 26. "As can be seen in FIG. 3, connectors 62A and B from back wall can be placed through tracks 32 and 36 respectively and essentially hook rear wall 26 in place along tracks 32 and 36. Teeth 62 along tracks 32 and 36 keep back wall 26 in place. In FIG. 3, back wall 26 is in the rearward-most position. Ghost lines 62A and 62B illustrate that back wall could be moved to the other extreme of tracks 32 and 36 to a forward-most position for smaller containers." (*Wittern*, Column 5, Lines 44-52). Any loading stress would be carried by the attached back wall 26.

The Examiner also stated that "Percy discloses a deflection plate 70 acting as an alignment member integrally formed of the wall surface 44 in guide containers 38 (Figure 4, Col. 5, line 12-20)." (December 27, 2007 Office Action, Page 4, Lines 1-2). The Applicants respectfully traverse this assertion of the Examiner for the reasons set forth below.

The *Percy* reference discloses a deflection plate 70. But the deflection plate 70 does not act as "an alignment member integrally formed of the wall surface 44." The Applicants have previously amended the claims of the patent application to claim "an integrally formed alignment member." Support for this previous amendment is provided in the specification. "Alignment member 160, and by extension guide surface 165, is integrally formed from planar surface 120." (Specification, Page 10, Lines 17-19). The deflection plate 70 of the *Percy* reference is not integrally formed of the wall 44. Figure 4 of the *Percy* reference shows that the deflection plate 70 is formed from a piece of material that is separate from the wall 44. That is, the deflection plate 70 is not "an integrally formed alignment member." The *Percy* reference states that "A deflecting plate 70 extends from an inner surface of the rear wall of the housing 44 inwardly toward the front wall thereof. . . ." (*Percy*, Column 5, Lines 12-14) (Emphasis added). The *Percy* reference does not show this element of the Applicants' invention.

In addition, the slanted plate 60 of the *Wittern* reference is also not "an integrally formed alignment member." Figure 2 of the *Wittern* reference shows that the slanted plate 60 is not formed from sidewall 20A (or any other sidewall). The *Wittern* reference states that "Note that the framework 22A and B, 24A, B, and C, sidewalls 20, and other structure (unless otherwise specifically discussed) are connected in conventional manners (e.g., bolts, welding, etc.)." (*Wittern*, Column 4, Lines 11-15). It is very clear from the *Wittern* reference that the slanted plate 60 is a separate item that is connected by conventional means.

For the reasons set forth above, the Applicants respectfully submit that Claims 1-9, 14-17 and 28 of the patent application are not obvious in view of the prior art references that have been cited by the Examiner.

Ground of Rejection 2: Claims 10 and 33 are rejected under § 103(a) as being unpatentable over *Wittern* in view of *Thompson* and in view of *Percy*.

With respect to Claim 10 and Claim 33 the Examiner asserted that these claims are unpatentable over *Wittern* in view of *Thompson* and in view of *Percy*. (December 27, 2007 Office Action, Page 8, Lines 1-3). The Examiner stated that "Wittern in view of Thompson and Percy disclose the alignment member 70 as a thin sheet material, which is made by stamping the shape out of a sheet panel." (December 27, 2007 Office Action, Page 8, Lines 1-3).

The Applicants respectfully traverse the rejections of Claim 10 and Claim 33. The Applicants herein incorporate by reference and repeat all of the comments and arguments that have been previously made in this Appeal Brief with respect to the *Wittern*, *Thompson* and *Percy* references.

Claim 10 is a dependent claim that ultimately depends on Claim 1. Therefore, Claim 10 includes the unique and novel elements of Claim 1 including an integrally formed alignment member. Therefore, Claim 10 is not obvious in view of the *Wittern*, *Thompson* and *Percy* references.

Claim 33 is a dependent claim that ultimately depends on Claim 28. Therefore, Claim 33 includes the unique and novel elements of Claim 28 including an integrally formed alignment member. Therefore, Claim 33 is not obvious in view of the *Wittern*, *Thompson* and *Percy* references.

Ground of Rejection 3: Claims 11-13, 18-23, 24-27 and 29-32 are rejected under § 103(a) as being unpatentable over *Wittern* in view of *Thompson* and in view of *Percy* and further in view of United States Patent No. 4,498,584 to Arthur D. Newbury ("*Newbury*").

With respect to Claims 11-13, 18-23, 24-27 and 29-32 the Examiner asserted that these claims are unpatentable over *Wittern* in view of *Thompson* and *Percy* and further in view of the *Newbury* reference. (December 27, 2007 Office Action, Page 8, Lines 11-13). The Examiner stated that "Newbury discloses a plurality of stiffening elements 13 defining an elongated, narrow slot extending the sidewall 3 (Figure 3, Col. 7 line 21-26)." (December 27, 2007 Office Action, Page 8, Lines 15-16). The Applicants herein incorporate by reference and repeat all of the comments and arguments that have been previously made in this Appeal Brief with respect to the *Wittern*, *Thompson* and *Percy* references.

The Applicants also respectfully submit that the Examiner has mischaracterized the teaching of the *Newbury* reference. As explained in *Newbury* at column 7, line 64, through column 8, line 15, reference character 13 indicates longitudinal slots in side walls of a container that allow the container to be lifted without disturbing adjacent containers—that is, longitudinal slots 13 are lifting handles. Stiffening of the container side walls is not provided by the slots 13, but rather by stiffening member 15, which is fastened between opposing, central sections of the sidewalls of the container. The Applicants are unable to find any teaching in *Newbury* that the lifting handles 13 either function as a stiffening element or serve as a decoupling member, as recited in Claim 1.

The Examiner stated that "The Office relies on the teaching as disclosed in Figure 3 of Newbury and this teaching of increasing the vertical strength of a container wall by adding corrugations (1) formed in the wall (see paragraph 7 line 20-26)." (December 27, 2007 Office Action, Page 13, Lines 3-5).

The *Newbury* reference asserts that the "vertical stacking strength" of a fish storage container that is made of high density polyethylene may be "enhanced" by the presence of a plurality of vertical corrugations 1 formed in the side wall 3 and in the end wall 5 of the container. (*Newbury*, Column 7, Lines 9-26). The Applicants are also unable to find any teaching in the *Newbury* reference that the vertical corrugations 1 function as a stiffening element or serve as a decoupling member, as recited in Claim 1.

The corrugations 1 of the *Newbury* reference are located in the external portions of the container. The corrugations 1 do not form "slots" through the walls of the container. Otherwise, water would leak out through the "slots." The *Newbury* container has a drainage hole 23 and a drainage plug 25. (*Newbury*, Column 8, Lines 39-44). This shows that the corrugations 1 in the sides of the *Newbury* container do not go all the way through the side wall 3 or all the way through the end wall 5. This means that the corrugations 1 form recesses in the side wall 3 and in the end wall 5. The corrugations 1 are not "slots" that extend through the walls of the container.

The *Newbury* reference does not explain how or why the corrugations 1 supposedly contribute to or "enhance" the "vertical stacking strength" of the *Newbury* container. The *Newbury* reference does not provide sufficient disclosure to support the assertion that removing a portion of high density polyethylene material from a side wall 3 of a high density polyethylene container increases the "vertical stacking strength" of the container. At any rate, there is no teaching or suggestion in the *Newbury* reference that removing a portion of high density polyethylene material to create vertical corrugations 1 stiffens the side wall 3 (or stiffens the end wall 5) of a high density polyethylene container.

There is also no teaching or suggestion in the *Newbury* reference that removing a portion of high density polyethylene material to create vertical corrugations 1 in a container would form corrugations 1 that would be capable of serving as a decoupling element that would prevent bow forces from transferring from a first portion of a column wall of a vending machine to a second portion of the column wall of the vending machine. This is especially so because the corrugations 1 of the *Newbury* reference are disposed vertically and not horizontally. The vertical corrugations 1 would not be capable of decoupling any vertical bow forces.

For these reasons, the Examiner has failed to establish that the cited references teach or suggest all the limitations of independent Claim 1. Therefore, Claim 1 is patentable over the cited references. Claims 2-17 depend, directly or indirectly, from Claim 1 and include all the limitations of Claim 1. As such, Claim 2-17 also are patentable over the cited references.

Furthermore, independent Claims 18 and 28 recite analogous limitations to the novel and non-obvious limitations in Claim 1. Therefore, Claims 18 and 28 also are patentable over the cited references. Claims 19-27 and Claims 29-33 depend, directly or indirectly, from Claims 18 and 28, respectively, and include all the limitations of their respective base claims. For this reason, Claims 19-27 and 29-33 also are patentable over the cited references.

The Appellants respectfully submit that the Examiner has failed to make a *prima facie* obviousness rejection of Claims 1-33. The Examiner is required to provide a determination of the level of ordinary skill in the art, and a factual basis to support such a determination. The Examiner has not done so. This requirement was recently reiterated by the Patent and Trademark Office in the "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.," published in the Federal Register on October 10, 2007. Any obviousness rejection should include an indication of the level of ordinary skill. Having made no such determination, and having provided no factual basis to support such a determination, the Examiner has failed to make a *prima facie* obviousness rejection, and the rejections of Claims 1-33 are legally deficient.

The Applicants respectfully submit that Claims 1-33 are in condition for allowance. The Board is respectfully requested to reverse the outstanding rejections and return this application to the Examiner for allowance of Claims 1-33.

The Commissioner is hereby authorized to charge any fees connected with this communication (including any extension of time fees) or credit any overpayment to Munck Carter Deposit Account No. 50-0208.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	PAUL HAYWARD KELLY ET AL.
Serial No.:	10/678,155
Filed:	October 6, 2003
For:	INTEGRATED COLUMN WALL FOR A VENDING MACHINE
Group No.:	3651
Examiner:	Rakesh Kumar

APPENDIX A -
Claims Appendix
37 C.F.R. § 41.37 (c)(1)(viii)

1. (Previously Presented) A vending machine comprising:

a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity;

a door pivotally mounted to the cabinet frame, said door being selectively movable between an open condition, wherein access to the central cavity is permitted for loading of product containers into the vending machine, and closed condition, wherein dispensing of product containers is permitted; and

a plurality of column walls arranged within the cabinet frame and separating the central cavity into a plurality of product stack areas, each of said plurality of column walls being formed from a material sheet having top, bottom and side edges that define a substantially planar wall surface, said wall surface including a plurality of integrally formed stiffening elements extending between the side edges, and an integrally formed alignment member, wherein

the stiffening members minimize bowing of the plurality of column walls under a weight of product containers,

the integrally formed alignment member provides for proper positioning of product containers within the product stack areas for dispensing from the vending machine, and

at least one of the plurality of stiffening elements comprises a decoupling member isolating a first area of the column wall from a second area of the column wall to minimize forces in the first area from being transferred to the second area.

2. (Original) The vending machine according to claim 1, wherein each of the plurality of column walls includes top, bottom and intermediate portions, said top and intermediate portions defining a storage region and said bottom portion defining a dispensing region.

3. (Original) The vending machine according to claim 2, wherein each of the top, bottom and intermediate portions includes at least one of the plurality of stiffing elements.

4. (Original) The vending machine according to claim 3, wherein the at least one of the plurality of stiffening elements constitutes a decoupling member provided on the bottom portion, said decoupling member isolating the dispensing region from the storage region to minimize forces in the top and intermediate portions from being transferred to the bottom portion.

5. (Original) The vending machine according to claim 4, wherein the bottom portion is separated from the intermediate portion only through narrow web members.

6. (Previously Presented) The vending machine according to claim 5, wherein the integrally formed alignment member is formed in the dispensing region.

7. (Previously Presented) The vending machine according to claim 6, wherein the integrally formed alignment member includes a guide element, said guide element being adapted to guide the product container away from the column wall.

8. (Previously Presented) The vending machine according to claim 2, wherein the integrally formed alignment member is formed in the dispensing region.

9. (Previously Presented) The vending machine according to claim 8, wherein the integrally formed alignment member includes a guide element, said guide element being adapted to guide the product container away from the column wall.

10. (Previously Presented) The vending machine according to claim 8, wherein the integrally formed alignment member is stamped from the material sheet.

11. (Original) The vending machine according to claim 1, wherein each of the plurality of stiffening elements defines an elongated, narrow slot.

12. (Original) The vending machine according the claim 11, wherein each of the plurality of stiffening elements extends fore-to-aft across the wall surface.

13. (Original) The vending machine according to claim 12, wherein each of the plurality of stiffening elements is stamped from the material sheet.

14. (Original) The vending machine according to claim 2, further comprising: a stiffener structure interconnecting at least two of the plurality of stiffening elements.

15. (Original) The vending machine according to claim 14, wherein the stiffener structure takes a form of an asterisk.

16. (Original) The vending machine according to claim 14, wherein the stiffener structure interconnects the at least two of the plurality of stiffening elements in the intermediate portion.

17. (Original) The vending machine according to claim 1, wherein the material sheet is made of 16 gauge sheet metal.

18. (Previously Presented) A vending machine comprising:

a cabinet frame including top, bottom, side and rear walls that collectively define a central cavity;

a door pivotally mounted to the cabinet frame, said door being selectively movable between an open condition, wherein access to the central cavity is permitted for loading of product containers into the vending machine, and a closed condition, wherein dispensing of product containers is permitted;

a plurality of column walls arranged within the cabinet frame and separating the central cavity into a plurality of product stack areas, each of said plurality of column walls being formed from a material sheet having top, bottom and side edges that define a substantially planar wall surface, said planar surface being defined by a storage region and a dispensing region; and

a stiffening element extending fore-to-aft across the planar surface in the dispensing region, said stiffening element comprising a decoupling member separating the bottom edge from the dispensing region such that the dispensing region is only connected to the storage region through web members defined about the decoupling member, wherein a transfer of any bow force from the storage region to the bottom edge is substantially eliminated.

19. (Original) The vending machine according to claim 18, wherein each of the plurality of column walls includes top, bottom and intermediate portions, said top and intermediate portions defining the storage region and said bottom portion defining the dispensing region.

20. (Original) The vending machine according to claim 19, wherein each of the plurality of column walls includes a plurality of integrally formed stiffening elements extending between the side edges.

21. (Original) The vending machine according to claim 20, wherein each of the top, bottom and intermediate portions includes at least one of the plurality of stiffening elements.

22. (Original) The vending machine according to claim 20, wherein each of the plurality of stiffening elements defines an elongated, narrow slot.

23. (Original) The vending machine according to claim 20, wherein each of the plurality of stiffening elements is stamped from the material sheet.

24. (Previously Presented) The vending machine according to claim 19, wherein each of the plurality of column walls includes an integrally formed alignment member.

25. (Previously Presented) The vending machine according to claim 24, wherein the integrally formed alignment member is formed in the dispensing region.

26. (Previously Presented) The vending machine according to claim 25, wherein the integrally formed alignment member includes a guide element, said guide element being adapted to guide the product container away from the column wall.

27. (Previously Presented) The vending machine according to claim 26, wherein the decoupling element is arranged below the integrally formed alignment member.

28. (Previously Presented) A method of forming a column wall used to form a stack area from product containers to be dispensed from a vending machine comprising:

providing a substantially rectangular metal sheet having top, bottom, and opposing side edges that define a substantially planar wall surface;

forming a plurality of vertically spaced stiffening elements out of the wall surface, wherein at least one of the plurality of stiffening elements comprises a decoupling member isolating a first area of the column wall from a second area of the column wall to minimize forces in the first area from being transferred to the second area; and

creating an integrally formed alignment member along the wall surface for positioning product containers for proper dispensing purposes.

29. (Original) The method of claim 28, further comprising: forming each of the plurality of stiffening elements with a fore-to-aft extending slot in the wall surface.

30. (Original) The method of claim 29, wherein the column wall includes upper, intermediate and lower portions, at least one of the stiffening elements being formed in the lower portion to decouple the lower portion from the upper and intermediate portions.

31 (Original) The method of claim 29, further comprising: interconnecting at least two of the plurality of stiffening elements through a stiffener structure.

32. (Original) The method of claim 28, further comprising: stamping each of the plurality of stiffening elements from the column wall.

33. (Previously Presented) The method of claim 28, further comprising: stamping the integrally formed alignment member from the column wall.

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In re application of: PAUL HAYWARD KELLY ET AL.

Serial No.: 10/678,155

Filed: October 6, 2003

For: INTEGRATED COLUMN WALL FOR A VENDING MACHINE

Group No.: 3651

Examiner: Rakesh Kumar

APPENDIX B
Evidence Appendix
37 C.F.R. § 41.37 (c)(1)(ix)

None

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APPENDIX C
Related Proceedings Appendix
37 C.F.R. § 41.37 (c)(1)(x)

None